

Original Title Page

RECEIVED

2015 JUL -9 AM 11:45

OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

ZIM / NYK SLOT EQUIPMENT REPOSITIONING AGREEMENT

A SPACE CHARTER AGREEMENT

FMC Agreement No. **012351**

EXPIRATION DATE: None.

This Agreement has not been published previously.



TABLE OF CONTENTS

<u>Article</u>	<u>Name</u>	<u>Page</u>
1	Parties	1
2	Definitions	1
3	Undertaking and Purpose	2
4	Scope of the Agreement	2
5	Containers and Cargo	2
6	Schedules	2
7	Terms of the Agreement	3
8	Slot Commitment	3
9	Booking Procedures	3
10	Slot Costs	3
11	Documentation and Liability	4
12	Force Majeure and Termination of Agreement	4
13	Applicable Law and Arbitration	5
14	Notices	6
15	Non-Assignment	6
16	Amendment and Embodiment	6
17	Further Agreements	7

WHEREAS: Zim operates container services between ports in Asia, Europe, Canada, South America and the Mediterranean and the United States Gulf, East and West Coasts;

WHEREAS: NYK operates container services between ports in Asia, Europe, Canada, South America and the Mediterranean and the United States Gulf, East and West Coasts; and

WHEREAS: Both Parties wish to utilize part of the other Party's carrying capacity in order to reposition empty containers on an *ad hoc* basis;

NOW THEREFORE THE PARTIES HERETO HAVE HEREUNTO AGREED as follows:

1. Parties

The parties to this Agreement are

ZIM INTEGRATED SHIPPING SERVICE, LTD.
9 Andrei Sakharov Street
"Matam" – Scientific Industries Center
P.O.B. 1723
Haifa, 31016 ISRAEL

Nippon Yusen Kaisha
3-2, Marunouchi 2-Chrome
Chiyoda-ku
Tokyo 100-91 JAPAN

2. Definitions:

"Agreement" means this ZIM / NYK EQUIPMENT REPOSITIONING AGREEMENT.

"Party" means either ZIM or NYK.

"Container(s)" means any ISO standard container(s) with a maximum height of 9'6" including any reefer and/or other special containers, provided they meet ISO standards. For the purpose of this Agreement, one FEU shall be equal to 2 TEUs.

"Vessel(s)" means a purpose built containership maintained in service by Zim or by NYK, or the containership of another carrier which either Zim or NYK is entitled to use and sub-charter pursuant to a space charter or similar agreement.

- "Slot" or "TEU"** means the space occupied by 1 x 20' x 8' x 8'6" or 1 x 20' x 8' x 9'6" ISO container for the predetermined maximum average gross weight.
- "The Loading Party"** means the Party on whose vessels (owned and/or operated) the containers are loaded.
- "The Shipping Party"** means the Party who is shipping containers on the other Party's vessels.

3. **Undertaking and Purpose**

Subject to the terms and conditions hereinafter set forth, Zim and NYK undertake to allow each other to charter Slots on their Vessels for the carriage of empty Containers on an ad hoc basis, with volume and other terms as described herein.

4. **Scope of the Agreement**

This Agreement covers the trade between ports on the East, Gulf and West Coast of the United States and ports in Europe, the Mediterranean, Canada, South America, and Asia.

5. **Containers and Cargo**

The Shipping Party will be allowed to ship only seaworthy, empty Containers (whether dry-cargo or refrigerated) meeting the definition mentioned in Clause 2 hereof.

6. **Schedules**

Each Party shall be allowed to utilize Slots available on each other's service and Vessels according to their respective schedules and service arrangements.

Either Party may permanently change its schedule, ports of call, rotation and Vessels at any time, at its sole discretion.

7. Terms of the Agreement

a) This Agreement shall commence on the date it becomes effective under the U.S. Shipping Act of 1984, as amended, and shall remain in force indefinitely unless terminated in accordance with the terms hereof. Either Party may terminate the Agreement by giving not less than three (3) months prior written notice to this effect to the other Party. This Agreement may be terminated at any time by mutual agreement of the Parties.

b) If one Party commits any one of the following situations, the other Party has the right, by giving written notice, to terminate this Agreement immediately without prejudice to any already accrued rights and obligations.

- a) Commencement of dissolution procedure;
- b) Filing of bankruptcy or insolvency procedure; or

Notwithstanding Article 7a, this Agreement shall continue in force to the extent that each Vessel should complete its cargo discharge at the last port of her final voyage which commenced prior to the respective termination.

8. Slot Commitment

At the Loading Party's discretion and subject to availability on vessels operated by the Parties, or slots chartered by a party and available for sub-charter on vessels operated by a Party's Vessel Sharing Agreement partners, the Parties may exchange slots between any of the Countries within the scope of this Agreement.

9. Booking Procedure

The Parties will coordinate their requirements case by case with each other's logistics centers and book their requirements with each other's booking centers as may be designated from time to time. In all instances delivery closing dates, booking and documentation procedures of the Loading Party shall be adhered to.

10. Slot Costs

The Parties shall agree on the amounts they shall charge one another for the carriage of empty Containers hereunder, and may adjust said amounts as they may agree from time to time. The Parties shall also agree on the terms on which such amounts shall be paid to one another.

11. Documentation and Liability

- (a) The Parties shall agree on the terms of issuance of documentation for cargo moving hereunder, the terms and conditions contained in that documentation and the procedures to be followed with respect to the issuance and processing of such documentation. The Parties are also authorized to agree on their respective liabilities with respect to damage to the empty containers (including general average) and the procedure to be followed in handling claims for such damages.
- (b) Each Party shall be responsible for insurance for its Vessels.

12. Force Majeure and Termination of Agreement

If circumstances arise, such as war or warlike activities, civil commotion, riots, invasion, rebellion, hostilities, governmental and/or national regulations, boycott against one flag or a political ban against any party, strikes, restraints of Princes and Rulers or any other cause of a like nature and which are of a nature adversely affecting the purpose of the Agreement, the Parties will, as far as possible, advise each other within 48 hours of such new circumstances and adopt the terms of this Agreement to the changed circumstances as far as possible.

- (a) Zim and/or NYK may, at their absolute discretion, discontinue their services or materially alter their route, scheduling and ports of call. In accordance to Article 9 coordination prior booking will include notice to this effect. Neither Party shall have any claim against each other with regard or in connection with such termination.

13. Applicable Law and Arbitration

- (a) This Agreement shall be governed by and interpreted in accordance with the Laws of England for the time being in force.
- (b) Any dispute, claim or violation which may arise under this Agreement shall be settled by arbitration in London in accordance with the Rules of the London Maritime Arbitrators Association, the Laws of England and the Arbitration Act of 1979 or any statutory modification or reenactment thereof for the time being in force.

Unless the Parties in the dispute agree on the appointment of a single arbitrator, the matter in dispute shall be referred to the decision of two arbitrators, one to be appointed by the Party complaining and the other by the Party complained against, with the power to such arbitrators to choose an umpire. If the arbitrators cannot agree upon the umpire within four (4) weeks after their appointment, the umpire shall be nominated by the Chairman of the London Maritime Arbitrators Association unless otherwise agreed between the Party complaining and the Party complained against.

If either of the Parties fails to appoint an arbitrator within twenty-one (21) days after the other has given written notice of the appointment of its arbitrator, then the arbitrator appointed by such other party shall act as sole arbitrator.

The arbitrator(s) or umpire shall give his (their) decision in writing with utmost dispatch. The award given by the arbitrator(s) or umpire shall be final and binding upon all parties concerned.

- (c) For disputes the sum of which does not exceed the amount of USD100,000.00 any Party shall be entitled to proceed by arbitration to be held in London according to the London Maritime Association Small Claims Procedures.

14. Notices

- (a) All legal process, notices or other formal communications required by or in connection with this Agreement shall be in writing and sent by letter or telex as appropriate or written means as may be agreed, and addressed to the other Party at their official company address as follows:

ZIM INTEGRATED SHIPPING SERVICES, LTD.
9 Andrei Sakharov Street
"Matam" – Scientific Industries Center
P.O. Box 1723
Haifa 31016 ISRAEL

Nippon Yusen Kaisha
3-2, Marunouchi 2-Chrome
Chiyoda-ku
Tokyo 100-91 JAPAN

- (b) Any such notices, legal processes or other formal communications shall be deemed to have reached the person to whom it is addressed 48 hours after posting or when dispatched.

15. Non-Assignment

Neither Party shall assign its rights, including its rights to utilize the Container Slots, or delegate its duties this Agreement to any other person or entity without the prior written consent of the other Party. Notwithstanding the above, each of the Parties may on written notice to the other Party assign its rights or delegate its duties under this Agreement to a fully-owned subsidiary; provided that in the event of such an assignment the Party to this Agreement shall remain responsible for the due and punctual performance to this Agreement by such a subsidiary.

16. Amendment and Embodiment

This Agreement may not be amended, modified or rescinded except in writing and duly signed by authorized signatories of the Parties, and any amendment, addendum or appendix so signed shall constitute a part of this Agreement.

17. Further Agreements


The Parties are authorized to enter into further agreements with respect to routine operational and administrative matters to the extent necessary or desirable to implement the general provisions contained in this Agreement without further amendment to this Agreement. Any further agreement contemplated by this Agreement, except to the extent such further agreement relates to routine operational and administrative matters, shall be filed with the FMC and become effective under the Shipping Act of 1984 prior to being implemented.

ZIM / NYK Equipment Repositioning Agreement
FMC Agreement No. _ 012351 _
Original Signature Page


SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have agreed this 6 day of June, 2015, to
amend and restate this Agreement and to file same with the U.S. Federal Maritime
Commission.

**ZIM INTEGRATED SHIPPING
SERVICES, LTD.**

By: 
Name: MARK E. NEWCOMB
Title: COUNSEL : VICE PRESIDENT

Nippon Yusen Kaisha

By: 
Name: Takashi Masuda
Title: General Manager
Global Network Planning